**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE**

**FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929**

**WP(C).No. 33544 of 2004(R)**
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**PETITIONERS:**
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1. **CHANDRAGUPTAN PILLAI,**
   **KAITHACHATHUPPIL VEEDU, KULATHARA, KOLLAYIL,**
   **ANAD MURI, PERINGAMALA VILLAGE.**

2. **SREEJA, D/O. CHANDRAGUPTAN PILLAI,**
   **KAITHACHATHUPPIL VEEDU, KULATHARA, KOLLAYIL,**
   **ANAD MURI, PERINGAMALA VILLAGE.**

**BY ADV. SRI.PHILIP T.VARGHESE**
**SRI.THOMAS T.VARGHESE**

**RESPONDENT:**
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**BINDU,**
**KAITHACHATHUPPU, KULATHARA, KOLLAYIL,**
**ANAD MURI, PERINGAMALA VILLAGE.**

**BY ADV. SRI.RAM MOHAN.G.**
**SRI.G.P.SHINOD**
**SRI.MANU V.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WPC.NO.33544/2004 R**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P1:** **COPY OF THE APPLICATION SUBMITTED AS I.A.NO.1002/2002 IN O.S.NO.281/1998 BEFORE THE MUNSIFF'S COURT, NEDUMANGAD DTD. 11/04/2002.**

**EXT.P2:** **COPY OF ORDER PASSED BY THE MUNSIFF'S COURT, NEDUMANGAD IN I.A.NO.1002/2002 IN O.S.NO.281/1998 DTD. 11/04/2002.**

**EXT.P3:** **COPY OF THE APPLICATION SUBMITTED AS I.A.NO.2502/2002 IN O.S.NO.281/1998 BEFORE THE MUNSIFF'S COURT, NEDUMANGAD DTD. 5/09/2002.**

**EXT.P4:** **COPY OF THE COUNTER AFFIDAVIT FILED TO EXHIBIT P3 APPLICATION DTD. 19/12/2002.**

**EXT.P5:** **COPY OF ORDER PASSED BY THE MUNSIFF'S COURT, NEDUMANGAD IN I.A.NO.2502/2002 IN O.S.NO.281/1998 DTD. 24/01/2003.**

**1ST RESPONDENT'S EXHIBIT:**

**EXT.R1(A):** **COPY OF JUDGMENT DTD. 28/03/2002 INO.S.NO.281/98 OF THE MUNSIFF'S COURT, NEDUMANGAD.**

**/TRUE COPY/**

*KSS*

**PIUS C. KURIAKOSE,J.**

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W.P.(C) No.33544 of 2004

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Dated: 22nd June, 2007

**JUDGMENT**

Ext.P5 order by which the court below has dismissed an application for restoration of an application to set aside the ex parte decree is under challenge. The Writ Petition is instituted some two years after Ext.P5 was passed.

2. I have gone through the Writ Petition and I have heard the submissions of Mr.Philip T.Varghese, learned counsel for the petitioners and Mr.Ram Mohan, learned counsel for the respondent. The suit was one for declaration of plaintiff's right over the suit property and for permission to put up a barbed wire fencing on its boundary the property covered by Ext.A1 which is a settlement deed executed in favour of the respondent by her mother. The executant of Ext.A1 had obtained title to the property from the 1st petitioner who was the previous owner. It is not specifically denied in the written statement which was filed by the 1st petitioner that the extent shown in the document which was executed by the 1st petitioner in favour of the mother of the respondent was two acres. On the contrary what is contended is that though an extent of two acres is shown in Ext.A1, the extent actually conveyed by the mother to the

daughter the respondent was only 1.75 acres. In other words, the contentions raised were not easily capable of being substantiated by adducing legal evidence. I have gone through Ext.P5. The learned Munsiff under Ext.P5 has found that the oral evidence adduced by the 1st petitioner did not inspire confidence in his mind. The explanation offered by the 1st petitioner for his absence when the case was taken up for trial was that he had left the court to purchase medicine without informing the counsel or any one else. The learned Munsiff significantly the same officer who presided over the court at the time of dismissal of the suit was not inspired by the oral evidence given by the 1st petitioner. I do not find any warrant for interfering with Ext.P5 especially since I feel that the contentions raised by the 1st petitioner through the written statement was almost impossible of being substantiated by adducing legal evidence. At any rate, it cannot be said that the impugned order is vitiated to the extent of entailing liability for interference under Article 227. The challenge against Ext.P5 will fail and the Writ Petition is dismissed. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**